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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

JOHNS, ANDREW W

ART UNIT	PAPER NUMBER
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2621

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,034

Applicant(s)

BAZIN

Examiner

Andrew W. Johns

Art Unit

2621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-163 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 90-121, 138-142 and 161-163 is/are allowed.
- 6) ☒ Claim(s) 1-20, 24-38, 42-77, 80-82, 86-89, 122-130, 134-137 and 143-160 is/are rejected.
- 7) ☒ Claim(s) 21-23, 39-41, 78, 79, 83-85 and 131-133 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/21/01, 4/12/02</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

5 A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10 (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the
15 international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-19, 24-32, 36-37, 42-77, 80-82, 89, 122-130, 134, 137 are rejected under 35 U.S.C. § 102(e) as being anticipated by Giacchetti (US 2003/0065589 A1).

20 The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. § 102(e). This rejection under 35 U.S.C. § 102(e) might be overcome either by a showing under 37 C.F.R. § 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate
25 showing under 37 C.F.R. § 1.131.

With respect to claims 1, 43, 69 and 122, Giacchetti teaches a method of enabling evaluation of a typological characteristic of an external body portion of an individual, the method comprising generating a sequence of images simulating varying degrees of at least one typological characteristic of an external body portion (i.e., templates showing varying degrees of wrinkles; paragraph [0055], line 11); and enabling identification of at least on image within the
30

sequence of images that substantially corresponds to a typological characteristic of the external body portion of the individual (user selects appropriate template that matches their external body portion; see paragraph [0055]). Giacchetti further teaches that the sequence of images simulate varying degrees of the at least one typological characteristic in at least a substantially continuous manner (paragraph [0055], lines 7-8), as additionally required by claims 2, 44, 70 and 137; that the sequence of images can be generated by a personal computer (paragraph [0095], lines 13-15), a computer server (paragraph [0095], lines 11-13) or an advice-giving apparatus at a retail premises (paragraph [0096], as variously defined in claims 3-6, 45-48 and 126; the sequence can be displayed as an animated sequence (paragraph [0065]), as stipulated by claims 7 and 49; displaying the images on a monitor, in response to an action of the individual, the action comprising one of acting on a cursor of a scroll bar, clicking a button on a mouse, touching a monitor, depressing a key on a keyboard, moving an eye, and issuing a voice command (see paragraph [0048]), as variously required by claims 8-10, 31, 43, 50-52, 64, 82, 125 and 130. Information associated with the identified image, which includes a number, is gathered at a location remote from the individual, while the sequence of images is displayed in a first geographical location and information is transferred to a second geographical location using a communication (i.e., Internet) protocol, with the transferred data stored and used to form a diagnosis or create a database (paragraphs [0046] and [0047]), as variously required by claims 11-19, 53-60, 72-74, 89, and 124. The sequence of images is generated by computation, such a morphing, where a starting and ending image are provided, corresponding to differing degrees of the characteristic (paragraph [0054]), as set forth in claims 24-26, 37, 61-63, 67, 81 and 129; the sequence of images being based on an external body portion intended to be evaluated (i.e. a face), as stipulated by claims 27-28; that the sequences include subsequences (any sequence of

more than one image inherently includes subsequences made up of various subcombination of elements of the larger sequence), as required by claims 29-30. Giacchetti further teaches that the at least one typological characteristic can include at least two typological characteristics, each of which can be modified by user input (paragraph [0048]), as required by claims 32 and 65; that
5 the at least one typological characteristic of the external body portion is chosen from number of wrinkles, depth of wrinkles, slackening of skin, number of creases, depth of creases, depth of rings around eyes, quantity of cellulite, droopiness of eyelids, number of skin flakes, size of skin flakes, quantity of sebum secretion, quantity of sweat secretion, dryness of skin, length of hair, curving of hair, density of hair, pigmentation, density of blackheads, spots of acne, blotchiness,
10 moles, outline of lips, and color (paragraph [0154]), as set forth in claims 36, 66, 80 and 128; and the generating of the images comprises generating images simulating the appearance of the external body portion (paragraph [0048]), as defined in claims 42 and 68. Giacchetti further teaches determining a treatment based on the degree of the characteristic (such as a wrinkle remover; paragraph [0115]), as required by claims 69, 71, 122 and 127; and allowing the
15 individual to order the product and delivering it to them (paragraph [0082]), as further required by claims 75-77.

Finally, Giacchetti also teaches an apparatus including a processor configured to perform the method defined above (shown generally in Figure 11; paragraphs [0137] to [0142]) as variously defined in claims 143-159. Furthermore, Giacchetti also teaches instructions stored on
20 a computer readable medium for performing the method defined above (paragraph [0132]), as defined by claim 160. Therefore, Giacchetti meets each of the various limitations of these claims and anticipates the claimed invention.

3. Claims 1-2, 11-12, 20, 38, 42, 69-72, 82, 86-88, 122-123, 130, and 134-136 are rejected under 35 U.S.C. § 102(b) as being anticipated by Maddison et al. (US 3,571,947 A).

Maddison et al. teaches a method of evaluation of a typological characteristic of an external body portion of an individual, the method comprising generating a sequence of images
5 simulating varying degrees of at least one typological characteristic of an external body portion (i.e., films 10 on which representations of skin blemishes are formed; column 2, lines 50-52); and enabling identification of at least one image within the sequence of images that substantially corresponds to a typological characteristic of the external body portion of the individual (films are compared to individuals skin to allow recognition of correspondence between a blemish on
10 the skin and a representation on the film; column 2, lines 33-40), as required by claim 1.

Maddison et al. further teaches that the generating of the sequence comprises images that simulate varying degrees of the at least one typological characteristic of the external body in at least a substantially continuous manner (column 2, lines 58-68), as further required by claim 2; gathering information comprising a number associated with the at least one identified image (i.e.,
15 reference number 20 on the film; column 2, lines 30-31), as variously required by claims 11 and 12; that enabling the identification comprises enabling comparison of an image of the external body portion of the individual with at least one of the images of the sequence (column 2, lines 33-40), as variously specified in claims 20 and 38; and that the generating of the images comprises generating images simulating an appearance of the external body portion (column 2,
20 lines 50-52), as further required by claim 42.

In addition, Maddison also teaches a method for enabling treatment of an external body portion of an individual, the method comprising generating a sequence of images simulating varying degrees of at least one typological characteristic of an external body portion (i.e., films

10 on which representations of skin blemishes are formed; column 2, lines 50-52); enabling
identification of at least one image within the sequence of images that substantially corresponds
to a degree of the at least one typological characteristic of the external body portion of the
individual (films are compared to individuals skin to allow recognition of correspondence
5 between a blemish on the skin and a representation on the film; column 2, lines 33-40); and
determining a treatment for the external body portion of the individual based on the at least one
identified image (each film includes a reference number 20; column 2, lines 30-31; which
references a page in a handbook that provides information about the blemish; column 3, lines 17-
23; including treatment information; column 3, lines 41-49), as stipulated by claim 69.

10 Maddison et al. further teaches enabling identification of at least one image within the
sequence that substantially corresponds to a degree of the typological characteristic of the
external body portion desired by the individual (column 2, lines 33-40), as set forth in claim 70;
that determining the treatment comprises determining a treatment based on the degree of the at
least one typological characteristic of the external body portion of the individual and the desired
15 degree of the at least one typological characteristic (column 3, lines 41-49), as required in claim
71; and gathering information associated with the identified image (i.e., reference number 20 on
the film; column 2, lines 30-31), as defined by claim 72. Additionally, Maddison et al. teaches
that the enabling of the identification comprises enabling the individual to perform the
identification (column 2, lines 33-40), as stipulated by claim 82; that the determining of the
20 treatment comprises determining a product intended for treating the external body portion of the
individual, the product chosen from one of a care product and a cosmetic product (column 3,
lines 45-59; care products are identified for treatment), as variously required by claims 86 and
87; and that the treatment comprises one of administration of the product to the individual and

the application of the product to the external body portion of the individual (treatments include medicants to be administered to individuals and ointments applied to the external body portion of the individual; column 3, lines 47-48), as defined in claim 88.

Furthermore, Maddison et al. additionally teaches a method of diagnosing, comprising
5 generating a sequence of images simulating varying degrees of at least one typological characteristic of an external body portion (i.e., films 10 on which representations of skin blemishes are formed; column 2, lines 50-52); enabling identification of at least one image within the sequence of images that substantially corresponds to a degree of said at least one typological characteristic of an external body portion of an individual to be diagnosed (films are
10 compared to individuals skin to allow recognition of correspondence between a blemish on the skin and a representation on the film; column 2, lines 33-40); and providing a diagnosis based on the at least one identified image (each film includes a reference number 20; column 2, lines 30-31; which references a page in a handbook that provides a diagnosis for the blemish; column 3, lines 17-23), as defined by claim 122.

15 Finally, Maddison et al. also teaches gathering information based on the at least one identified image (column 3, lines 17-23), as further required by claim 123; that the enabling of the identification comprises enabling the individual to perform the identification (column 2, lines 33-40), as stipulated by claim 130; and determining a treatment for the external body part of the individual based on the diagnosis (column 3, lines 41-49), comprising one of administering a
20 product to the individual and applying a product to the external body portion of the individual (treatments include medicants to be administered to individuals and ointments applied to the external body portion of the individual; column 3, lines 47-48), wherein the product is chosen

from a cosmetic product and a care product (column 3, lines 45-59; care products are identified for treatment), as variously set forth in claims 134-136.

Therefore, Maddison et al. meets each of the limitations of the claims addressed above and anticipates the claimed invention.

Claim Rejections - 35 U.S.C. § 103

4. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 33-35 rejected under 35 U.S.C. § 103(a) as being unpatentable over Maddison et al.

While Maddison et al. meets a number of the limitations of the claimed invention, as pointed out more fully above, Maddison et al. fails to specifically teach that the sequences of image can include 10, 20 or 50 images, as variously stipulated by claims 33, 34 and 35. However, Maddison et al. does clearly teach that a plurality of images related to different characteristics be included on the films, so that one of ordinary skill in the art would have found it obvious to include a sufficient number to represent the entirety of the set of conditions to be detected. Because the specific number of images does not appear to have any importance beyond adequately representing the range of typological characteristics to be detected, it would have been obvious to one of ordinary skill in the art to use any specific number of images necessary to achieve that end, including those specifically set forth in the claims.

Allowable Subject Matter

6. Claims 90-121, 138-142 and 161-163 are allowed.

7. Claims 21-23, 39-41, 78-79, 83-85 and 131-133 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

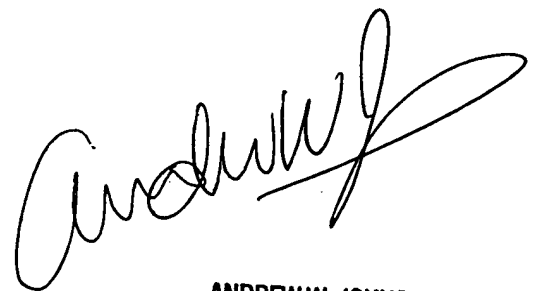
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Saita et al., Snead and Kravetz each teaches the use of computer systems to assist users in selecting cosmetic treatments.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Johns whose telephone number is (703) 305-4788. The examiner is scheduled to move to the Alexandria Headquarters on 28 March 2005. After the move, the examiner's telephone number will be (571) 272-7391. The examiner is normally available Monday through Friday, at least during the hours of 9:00 am to 3:00 pm Eastern Time. The examiner may also be contacted by e-mail using the address: andrew.johns@uspto.gov. (Applicant is reminded of the Office policy regarding e-mail communications. See M.P.E.P. § 502.03)

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Bhavesh Mehta, can be reached on (703) 308-5426. The fax phone number for this art unit is (703) 872-9306. In order to ensure prompt delivery to the examiner, all unofficial communications should be clearly labeled as "Draft" or "Unofficial."

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center Receptionist whose telephone number is (703) 305-4700.

A. Johns
28 February 2005



ANDREW W. JOHNS
PRIMARY EXAMINER